LEE LEE CHENG v. SEOW PENG KWANG

[O.C.J. (Syed Sheh Barakbah J.) October 27, 1958]

[Ipoh — Civil Suit No. 43 of 1958]

Limitation — Fatal accident — Civil Law Ordinance, 1956, s.8(3)(b) — Construction of — Courts Ordinance, 1948, 2nd Schedule, Pt. A, Item 12 — Statutory or inherent jurisdiction of Court to extend time.

Practice and Procedure — Jurisdiction of High Court — Jurisdiction to enlarge or abridge time — Courts Ordinance, 1948, 2nd Schedule, Pt. A, Item 12.

A motor car and a lorry travelling in opposite directions were involved in a collision on March 21, 1956 which resulted in instantaneous death of Gooi Kim Kwan, a passenger in the motor car and Loke Ta Poh, the driver of the lorry. The plaintiff, as administrator of the estate of Gooi Kim Kwan, having extracted grant of letters of administration on November 11, 1957, instituted this action on February 17, 1958 under the Civil Law Ordinance claiming damages for the wrongful death of the deceased and loss of benefit to the dependants against the defendant, who had extracted grant of letters of administration of Loke Ta Poh's estate on August 8, 1957. Under section 8(3) of the Civil Law Ordinance, no proceedings are maintainable unless proceedings are commenced not later than six months after his (Loke Ta Poh's) personal representative took out representation — the last date for filing the action being February 10, 1958 (9th being a Sunday).

An application was made by the defendant under R.S.C. O.25 r.3 for dismissing the action as statute barred: the plaintiff also applied for an order under Item 12 in the 2nd Schedule Part A of the Courts Ordinance that the time prescribed by section 8(3)(b) be enlarged so as to validate the proceedings or alternatively to enable new proceedings to be instituted in respect of the same cause of action.

Held: (1) Item 12 of Part A, 2nd Schedule to the Courts Ordinance, 1948 merely sets out the jurisdiction of the High Court where express provision is made by law to enlarge the time. It does not give general power of enlargement to the Court and equitable considerations are out of place;

(2) the High Court does not possess any inherent discretionary power to dispense with the specific provisions as to limitation and the strict grammatical meaning of the words is the only safe guide. It has no power to resuscitate an action which must fail in limine upon a plea of limitation.

Cases referred to:—

(1) *Nagendra Nath Dey & Anor. v. Suresh Chandra Dey & Ors.*, A.I.R. 1932 P.C. 165.

(2) *Maqbul Ahmad & Ors. v. Onkar Pratap Narain Singh & Ors.*, A.I.R. 1935 P.C. 85.

CIVIL SUIT.

P. Dharmananda for the plaintiff.

W. J. Huntsman for the defendant.

Cur. Adv. Vult.

Syed Sheh Barakbah J.: — The plaintiff in this case is the widow and Administrator of the Estate of Gooi Kim Kwan alias Gooi Kim Kwai, deceased. She is suing the defendant, who is the Administrator of Loke Ta Poh, deceased, for damages for negligent driving. In paragraph 6(e) of his Statement of Defence, the defendant states "that in any event the plaintiff's action was not commenced before the expiration of six months from the date on which the defendant took out representation to the estate of Loke Ta Poh, deceased, and the plaintiff's alleged cause of action is barred by the provision of section 8(3)(b) of the Civil Law Ordinance, 1956."

The facts of the case briefly are that on the 21st day of March, 1956, Gooi Kim Kwan alias Gooi Kim Kwai was travelling as a passenger in a motor car along Sungei Siput at or near the 13th milestone Sungei Siput-Chemor Road, Perak, when the car in which he was travelling came into collision with a motor lorry No.AA 797, which was travelling in the opposite direction. In consequence of the said collision both the driver, Loke Ta Poh, and Gooi Kim Kwan alias Gooi Kim Kwai were killed.

Letters of Administration to the estate of Gooi Kim Kwan alias Gooi Kim Kwai, deceased, were granted to the plaintiff on the 19th day of February, 1957, and the grant was extracted on the 11th day of November, 1957. Letters of Administration to the estate of the driver, Loke Ta Poh, deceased, were granted to the defendant on the 4th day of November, 1956, and the grant was extracted on the 8th August, 1957.

The Plaint was filed by the plaintiff and admitted by the Court on 17th February, 1958.

On the 29th day of July, 1958, the defendant filed an application by way of Summons in Chambers for an order that the point of law raised by him in paragraph 6(e) of his defence be set down for hearing and disposed of before the trial, and on 9th September, 1958, the plaintiff by Notice of Motion applied for an order that the time prescribed by section 8(3)(b) of the Civil Law Ordinance No. 5 of 1956 be enlarged so as to validate the proceedings in the above action, or, alternatively to enable new proceedings to be instituted in respect of the causes of action in which these proceedings have been instituted.

As the application in Summons in Chambers was connected with the Motion, I adjourned the application in Chambers to open Court and dealt with it together with the Motion.

The questions before the Court were, first, whether the action was barred by limitation as prescribed by section 8(3)(b), Civil Law Ordinance; secondly, whether action should be brought not later than 6 months after the grant of Letters of Administration or after extract of grant of Letters of Administration; and, thirdly, whether this Court has jurisdiction to enlarge the time so as to validate the proceedings in the above action.

I will deal with the last question first. Section 8(3)(b), Civil Law Ordinance, states:—

"8. (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either —

(a) were pending at the date of his death; or

(b) are taken not later than six months after his personal representative took out representation."

Letters of Administration to the estate of Loke Ta Poh, deceased, were granted to the defendant on the 4th day of November, 1956, and the grant was extracted on 8th August, 1957. This action was instituted on 17th February, 1958. Now, assuming that the time prescribed by section 8(3)(b), Civil Law Ordinance, 1956, commenced to run against the plaintiff on the 8th day of August, 1957 — the day the grant was extracted — the plaintiff's suit would become statute barred on or about the 10th day of February, 1958. As the action was filed on 17th February, 1958, the plaintiff was a week late, and, therefore, the action was barred by limitation. This was admitted by the plaintiff in his affidavit dated 5th September, 1958.

Now, what I have to decide is whether this Court has power to enlarge the time. Mr. Dharmananda, for the plaintiff, in his submission stated that this Court had power to enlarge the time and referred to item 12 in the second schedule of the Courts Ordinance, 1948. It reads as follows:—

"12. Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed."

He further stated that there was no similar provision in the English Acts, and therefore was unable to produce authorities to support his contention.

In reply, Mr. Huntsman, for the defendant, submitted that item 12 was merely declaratory. It declared the Court's power to extend the time where there was express provision in the law to do it. With this view, I am inclined to agree. This item 12, in my opinion, merely sets out the jurisdiction of the High Court, namely, the scope of authority to deal with certain matters expressly provided for by the law, and the Court could enlarge the time only where there was express provision in the law to that effect, as, for instance, among others, the Land Acquisition Enactment (Cap.140), section 22(3) and (4) and section 5(1) of the Japanese Judgments and Civil Proceedings Ordinance, 1946, where the law specially provides the power of enlargement by the Court. In my view, item 12 does not give general power of enlargement to the Court.

In construing the provisions regarding limitation in the Civil Law Ordinance equitable considerations are entirely out of place and the strict grammatical meaning of the words is the only safe guide; and it is not competent for the Court to travel outside the limits of the Ordinance since the Ordinance itself does not invest the Court with any statutory or inherent discretionary power to dispense with its provisions. If an action fails in limine upon a plea of limitation, there is no power in the Court to resuscitate it. If any authority for that proposition is needed it can be found in two Privy Council decisions: *Nagendra Nath Dey & Anor. v. Suresh Chandra Dey & Ors.*[1] and *Maqbul Ahmad & Ors. v. Onkar Pratap Narain Singh & Ors.*[2]

Having decided that this Court has no power to enlarge the time, it is unnecessary for me to deal with the remaining questions. I therefore dismiss the plaintiff's application in the Notice of Motion with costs on the higher scale and hold that the plaintiff's alleged cause of action is barred by the provision of section 8(3)(b) of the Civil Law Ordinance, 1956, and order that the costs in Summons in Chambers be costs in the cause.

Order accordingly.

Solicitors: *Murphy, Dunbar & Chung* (Singapore); *Maxwell, Kenion, Cowdy & Jones.*